

Remarks of Senator Daniel K. Akaka
before the Senate Committee on Governmental Affairs
February 24, 1999

Thank you Mr. Chairman. I wish to express my appreciation to you and Senator Lieberman for your efforts in bringing about these hearings on the Independent Counsel Act. I also want to thank Senator Levin for his remarks. As the coauthor of the legislation, his perspective and counsel greatly enhance our deliberations. And to our expert panelists, thank you for bringing your unique perspectives to the table.

As my colleagues have outlined in their statements, we are now 20 years into the Independent Counsel Act. Since the enactment of the Ethics in Government Act of 1978, which included provisions for the appointment of an independent counsel to investigate wrongdoings by high level executive branch officials, there have been three reauthorizations--each of which resulted in changes influenced by actions of preceding independent counsels. I do not need to recount the modifications the law has undergone, but rather, suggest the reading of a recent Mercer Law Review article, "The History of the Independent Counsel Provisions," by Katy Harriger, one of the leading historians on the Act.

Our series of hearings offer a good opportunity to review thoroughly the successes and failures of the Act through the experiences of those who have served as independent counsels, from individuals who have been the targets of their investigations, and legal experts who have examined the law. We will see if the Act has lived up to its promise of providing a mechanism to ensure impartial justice in dealing with high level federal officers. By bringing together these witnesses, we will be better able to analyze the weaknesses and strengths of the current statute.

Obviously, there are flaws in the Act that are propelling it towards extinction. Given the acrimonious history of the statute, there are many with a strong distaste for the law who look forward to its expiration this June. If we wish to find a workable solution to fixing the Act, these hearings provide an opportunity to do so.

There is strong public opinion against the statute at the present time. Even organizations such as the American Bar Association, which was instrumental in the creation of the statute, are now coming out against it. Because there are sharply

divided views on the reauthorization of the Act, I am confident that this Committee will provide a fair and bipartisan platform for the ensuing debate.

I am open to seeing if reauthorization is a viable option. However, without significant changes, I understand why there is such an outcry against the statute as it currently operates. In reviewing the many papers written on the law, I have been particularly struck by the scholarship that has been accorded to reauthorization and the breadth to which the legal community has debated the issue. I expect that our hearings will produce the same vigorous discussions that have occurred outside the halls of Congress.

I am also looking forward to hearing from Attorney General Reno, who is scheduled to testify next month. I know that the Attorney General, in her 1993 testimony before this Committee on the Act's reauthorization, said, "that the statute has served the country well." I will also be interested to learn if the Administration supports reauthorization as it did in 1993. Last week, Deputy Attorney General Eric Holder, Jr., who heads a Justice Department task force reviewing the Independent Counsel Act, said he expects the Administration to have a formal recommendation prior to either his testimony before the House this week or before Ms. Reno appears before this panel.

I understand that Kenneth Starr has been invited to testify before the Committee to add his views on the Act, and I am hopeful that he will accept the invitation.

In closing, I would like to quote Professor Ken Gormely, the author of two recent law review articles, who said, the "...days of turmoil and governmental crisis are the worst times to make sweeping decisions to abandon entire legislative schemes." I agree with Professor Gormely, and I ask that we all keep open minds on this statute so we may fairly judge its viability.